

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON TOXICS COALITION,
et al.,

Plaintiffs,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Defendants,

and

CROPLIFE AMERICA, et al.,

Intervenor-Defendants.

NO. C01-0132 C

INTERVENOR-DEFENDANTS'
RESPONSE TO PLAINTIFFS'
REQUEST FOR STATUS
CONFERENCE

Intervenor-Defendants CropLife America, et al. ("Intervenors")¹ hereby respond to Plaintiffs' "Request for Status Conference to Address Implementation of January 22, 2004 Order," filed April 9, 2004.

¹ "CropLife America, et al." includes the following Intervenor-Defendants: CropLife America, Western Plant Health Association (formerly California Plant Health Association), Oregon Agricultural Chemicals & Fertilizers Association, Agricultural Retailers Association, Far West Agribusiness Association, Agricultural Cooperative Council of Oregon, Fruit Growers League of Jackson County, Hood River Grower-Shipper Association, Hop Growers of Washington, Idaho Mint Growers Association, Malheur County Onion Grower's Association, National Potato Council, Orchard View Farms, Oregon Alfalfa Seed Growers Association, Oregon Cranberry Farmers' Alliance, Oregon Farm Bureau Federation, Oregon Hop Growers Association, Oregon Horticultural Society, Oregon Seed Council, USA Dry Pea and Lentil Council, Wasco
(footnote continued...)

1 Intervenor do not believe a status conference is necessary. Intervenor have
2 satisfied their two obligations under the January 22, 2004 Order: first, by distributing, at
3 significant expense, the point of sale notification developed by EPA in quantity, for point
4 of sale distribution, to sales outlets where lawn and garden products are sold in the urban
5 areas subject to the Order; and second, by ensuring that their members were made aware of
6 this Court's orders on summary judgment and further injunctive relief. *See* Intervenor-
7 Defendants' Status Report (Mar. 22, 2004).

8 Plaintiffs' request for a status conference concerns the point of sale notification for
9 pesticides in urban areas. Plaintiffs do not dispute that Intervenor have made the
10 distribution required by the order. Rather, in twelve pages of attachments to their request,
11 Plaintiffs raise a rash of side issues concerning implementation details that the January 22
12 Order either leaves to the discretion of the implementing parties or does not address at all.
13 We respond to Plaintiffs' points below:

14 First, although Plaintiffs describe the notice CropLife sent to retailers (appended at
15 Plaintiffs' Attachment 1) as "confusing at best," the notice speaks for itself. It provides
16 direct links for the recipient to the Court's order and to the Environmental Protection
17 Agency ("EPA") web site for the "context" the Plaintiffs mistakenly assert is lacking,
18 including such information as the identities of the pesticides at issue, the urban areas
19 covered, and the reason for the posting. Short of distributing a full copy of the January 22
20 Order – a burdensome and costly undertaking that the Order does not require – CropLife's
21

22

(continued from previous page)

23 County Fruit & Produce League, Washington Association of Wheat Growers, Washington Mint Growers
24 Association, Washington State Horticultural Association, Western Washington Agricultural Association,
25 Oregon Cattlemen's Association, Oregon Dairy Farmers Association, American Forest Resource Council,
26 Oregon Forest Industries Council, Washington Friends of Farms and Forests, Oregonians for Food and
Shelter, Western Washington Golf Course Superintendents Association, National Agricultural Aviation
Association, and California Agricultural Aircraft Association.

1 notice provides an efficient and effective means of notification of the exact terms of the
2 Court's order.

3 Second, Plaintiffs complain that CropLife's notice to retailers directs the reader to
4 "an industry website to obtain copies of the point-of-sale notifications." Yet, the retailers
5 have already received the hard copy point of sale notification *in quantity* with CropLife's
6 notification letter – they do not have to go to the web site to get it. In fact, Plaintiffs'
7 statement confirms that Intervenor *exceeded* the minimum required by the January 22
8 Order. Whereas the Order only required Intervenor to make the distribution, Intervenor
9 went further by providing an on-line source where retailers could obtain *additional* copies
10 of the notification, www.pestfacts.org. The opening page of that website prominently
11 displays the following boldface link, which is cut off in the truncated copy Plaintiffs
12 provided the Court as an attachment to their request for a status conference:

13
14 **URBAN NOTIFICATION**
15 **COURT ORDER**
16 **January 22, 2004**
17 **Washington Toxics Coalition v.**
18 **The United States Environmental Protection Agency (EPA)**
19 **(WA, OR and CA Locales)**
20 **Click here for more information**

21 That link takes the reader to a page (<http://www.pestfacts.org/watoxics/index.html>)
22 consists of the following information and links:
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

URBAN NOTIFICATION COURT ORDER	
January 22, 2004	
Washington Toxics Coalition	
v.	
The United States Environmental Protection Agency (EPA)	
(WA, OR and CA Locales)	
As of April 2, 2004 this information pertains to products containing the following active ingredients only: 2,4-D, carbaryl, diazinon, diruon, malathion, triclopyr BEE, and trifluralin	
Notification Letter to Retailers	EPA Federal Register Notice
EPA "Point of Sale" Graphic	Final Full Court Order
More information at the EPA website: http://www.epa.gov/espp	

As with the notification letter itself, this page readily supplies the "context" that Plaintiffs falsely claim is missing – it identifies the pesticide products at issue and points the reader to all the pertinent legal documents, including the complete text of this Court's January 22 Order and EPA's Federal Register notice on point of sale notifications (69 Fed. Reg. 13836, Mar. 24, 2004).²

It is of no moment that, as Plaintiffs complain, this material is posted on an industry web site or that the site's opening screen contains, in addition to the first text described above, information reflecting the industry's perspective on issues of importance to the industry – including stopping the spread of West Nile Virus, SARS, public mosquito-control projects, and risks pests pose to children. Indeed, the reason the information about this litigation is on an industry web site is that the language of the injunction, which *Plaintiffs* drafted, requires the notification to retailers be made *by the industry Intervenors*. That the web site includes advocacy on the Endangered Species Act ("ESA") should come as no surprise to Plaintiffs, since the avoidance of undue ESA restrictions on pesticide use

² Full copies of these web pages are appended at Attachment A to this Response.

1 was the central reasons why Intervenor decided to participate in this lawsuit. Plaintiffs'
2 desire for censorship notwithstanding, Intervenor remain free to express their views on
3 ESA-related issues, much as they did in this Court when they objected to being the vehicle
4 for posting notices that discouraged the use of the very products that they manufactured
5 and sold. Moreover, there is no need for a retailer to go to the web site unless it chooses to
6 obtain additional copies of the notification by downloading them.

7 Third, Plaintiffs object to the following undisputedly true statement in the point-of-
8 sale notification:

9 This point of sale notification was produced in compliance with a January
10 22, 2004 Court Order, to notify urban users about the potential for **some**
pesticides to harm fish.

11 Intervenor fail to comprehend this objection. The January 22 Order dictated that the point
12 of sale notification have a prominent heading and certain text, which it has; but the Order
13 otherwise left design and content of the notification up to EPA. If anything, the additional
14 language EPA added reinforces the importance of the notification by explaining that this
15 Court's authority lies behind it. The electronic version posted on the RISE web site is
16 exactly the version that EPA transmitted to Intervenor for posting.

17 Finally, Plaintiffs' request for a "new notification to retail outlets" – besides being
18 unnecessary for the reasons discussed above – would be financially burdensome to
19 Intervenor, who have already expended roughly \$20,000 to comply with the point of sale
20 notification requirement.

21 * * *

22 To sum up: Intervenor have fully complied with their obligations under the
23 January 22 Order. We do not believe a status conference is necessary, inasmuch as
24 Plaintiffs' issues are misguided and unfounded (and peripheral at best).

1 DATED this 13th day of April, 2004.

2
3 LEARY FRANKE DROPPERT PLLC
4 J.J. Leary, Jr. (WSBA No. 08776)
5 1500 Fourth Avenue, Suite 600
6 Seattle, WA 98101
7 (206) 343-8835

s/J. Michael Klise

Steven P. Quarles, pro hac vice
J. Michael Klise, pro hac vice
Thomas R. Lundquist (D.C. Bar No. 968123)
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 624-2500

8 Attorneys for Intervenor-Defendants CropLife America, et al.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Attachment A



Looking for an answer
to a pesty problem?
Click here

[contact](#) [site map](#) [search](#) [home](#)

[Pests 101](#) [Pesticides](#) [News](#) [Reading Room](#) [About RISE](#) [Interesting Links](#) [Pesticide FAQs](#)

April 13, 2004

[search pestfacts.org](#)

[Did you know...?](#)

Have Your Say on ESA!

[Click here for more details](#)

Hidden, hungry invader threatens city of Mardi Gras City fights Formosan termites

For decades, the historic buildings -- in the city that's home to jazz and jambalaya -- have fought for survival against one of the most voracious and destructive forces in the termite kingdom.

[click here to view the story](#)

Most Americans Believe Environmental Groups are "Too Extreme"
[click here for the poll results](#)

Additional Headlines:

- > [Long Island man dies of West Nile](#)
- > [Stopping the real pests](#)
- > [West Nile virus hit hard, didn't hit home](#)
- > [Rats prompt Chicago school cleanings](#)
- > [SARS-Weary China to Sweep out Pests Called the "Four Dangers"](#)
- > [Bedbugs making a comeback](#)
- > [Colorado county to spend \\$680,000 on mosquito control in 2004](#)

URBAN NOTIFICATION COURT ORDER

January 22, 2004

Washington Toxics Coalition v.
The United States Environmental
Protection Agency (EPA)
(WA, OR and CA Locales)

[Click here for more information](#)

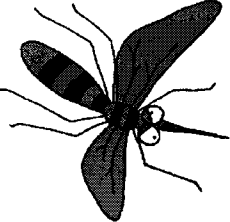
Why Pesticides?

Click on the links below to view this 4-page fact sheet focusing on pests, the problems they pose and effective methods for their control.

[PDF Version](#) - larger file with rich graphics suitable for re-printing

[HTML Version](#) - smaller file; downloads more quickly

- > **Science rejects anti-pesticide claim**
- > **West Nile Virus fact sheet and informational web site from USDA**



Summer is fast approaching along with the season's fresh crop of mosquitoes.

Click here to visit westnilevirusfacts.org a comprehensive look at West Nile virus and the responsible control of mosquitoes.

Other RISE Resources

Visit these other online resources RISE has developed to keep you informed and up-to-date:

> **Why Pesticides?**

A 4-page fact sheet focusing on pests, the problems they pose and effective methods for their control.

> **Westnilevirusfacts.org**

An information resource on West Nile Virus and the responsible control of mosquitoes.

> **Schoolpestfacts.com**

A site focusing on children's health, IPM, pests and the safe use of pesticides.

> **Read the Label First!**


A campaign to improve labels and help consumers purchase, use, and dispose of products more safely and responsibly.

> **Lawn Management**

Read this fact sheet for homeowners with information on the use of lawn fertilizers and the protection of water quality.

> **Phosphorous, Urban Runoff and Aquatic Weeds**

Click on the logo to the right to view and download valuable information on the risks pests pose to children.



Did you know?

In 2003, there were nearly 9000 cases of West Nile Virus in the US resulting in more than 200 deaths.

Get the facts with these Questions and Answers about Pesticides, courtesy of Grounds Maintenance Magazine

Discusses the benefits of turf as well as the importance of phosphorus in healthy turf management.

[back to top](#)

Copyright © 2002-2004, RISE (Responsible Industry for a Sound Environment)®, All rights reserved.
RISE, 1156 15th Street, NW, Suite 400, Washington, DC 20005
phone: 202-872-3860 fax: 202-463-0474

[privacy statement](#)

site design and management by:



Blue Pumpkin Group

<http://www.bluepumpkingroup.com>

URBAN NOTIFICATION COURT ORDER**January 22, 2004****Washington Toxics Coalition****v.****The United States Environmental Protection Agency (EPA)****(WA, OR and CA Locales)**

As of April 2, 2004 this information pertains to products containing the following active ingredients only: 2,4-D, carbaryl, diazinon, diruon, malathion, triclopyr BEE, and trifluralin

Notification Letter to Retailers	EPA Federal Register Notice
EPA "Point of Sale" Graphic	Final Full Court Order

More information at the EPA website: <http://www.epa.gov/espp>